IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16219 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIMMATBHAI J KARIA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PARESH UPADHYAY for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

ORAL JUDGMENT

1. **Rule. Shri M.R.Mangade, learned AGP waives service of rule on behalf of the respondents – State Authorities.** With the consent of the learned

advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction order quashing and setting aside the order passed by the Collector, Gandhinagar dated 9.4.2004 and confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 16.5.2005 passed in Revision Application No.25 of 2004.

3. It appears from the record that the land in question situated at Gandhinagar was put to auction by the Collector, Gandhinagar and an up-set price was also fixed. The petitioner claims to be the highest bidder in the said auction. However, as the Collector, Gandhinagar was of the opinion that they have not fetched the proper price and the offer made by the petitioner to purchase the land / plot in question is on lower side and as per the report of the valuation committee, the value of the land in question is much more and therefore, the Collector,

Gandhinagar passed the order dated 9th April, 2004 canceling the action by observing that if the land in question is sold to the petitioner at the price offered by him,then it will be financial loss to the State Government as the same is not the just and proper price of the land in question. Being aggrieved and dissatisfied with the order passed by the Collector, Gandhinagar dated 9.4.2005 in cancellation the auction and directing to put the above land in question for fresh auction, the petitioner preferred Revision Application No.25 of 2004 before the Secretary, Revenue Department (Appeals), Revenue Department, State of Gujarat. It was contended on behalf of the petitioner that with respect to the adjacent land, the Collector has confirmed the sale for the amount which was offered by the petitioner and therefore, it is not open for the Collector to hold that offer which is made by the petitioner is on lower side. The Joint Secretary, Revenue Department (Appeals), State of Gujarat by its order dated 16th May, 2005 dismissed the said revision application by holding that the reasoning and the order passed by the Collector cannot be said to be illegal and and in

fact it is just and proper and the same is not required to be interfered with. Being aggrieved and dissatisfied with the said judgment and order passed by the Joint Secretary, Revenue Department (Appeals), State of Gujarat by its order dated 16th May, 2005 in dismissing the said revision application No.25 of 2005, the petitioner herein has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri Paresh Upadhyay, learned advocate appearing on behalf of the petitioner has vehemently submitted that the petitioner has offered price higher than the upset price and therefore, it was not open for the Collector not to accept the offer of the petitioner which was highest offer. He has also further submitted that the Collector has come to the conclusion to the effect that the price which is offered by the petitioner is not the adequate or not correct market price and which is on lower side on the basis of the report of the Valuation Committee which has not been given to the petitioner and the petitioner is not informed on what basis the

Collector has come to the conclusion that the offer of the petitioner did not fetch adequate price for the land / plot in question. He has also further submitted that so far as the another adjacent land is concerned which was also put to auction, the very Collector has accepted the offer and and so far as the land / plot in question is concerned, the Collector has not accepted the offer on the ground that the price offered by the petitioner is not adequate. Shri Upadhyay, learned advocate has also relied upon the order passed by the learned Single Judge of this Court (Coram : Akil Kureshi, J.) dated 8.8.2005 passed in Special Civil Application No.16220 of 2005 in which also the petitioner of the special civil application challenged the action of the Collector in not accepting the offer made by him for the purchase of the land bearing Plot No.1088/1 situated at Sector No.6, Gandhinagar and the learned Single Judge has remanded the matter to the Collector, Gandhinagar to take decision afresh after supplying the copy of the report of the Valuation Committee which was relied upon by the Collector.

5. I have considered submissions made by Shri Upadhyay, learned advocate on behalf of the petitioner. The prayer of the petitioner to direct the Collector, Gandhinagar to reconsider the offer made by the petitioner in public auction held on 17.10.2003 for the sale of the land in question and further directing the Collector, Gandhinagar to sell the land in question at the price offered by the petitioner, cannot be granted. If the Collector is of the opinion that the price which is offered by the petitioner is not adequate and/or it has not fetched the proper value and/or the price offered is on lower side, in that case, the Collector cannot be compelled to sell the land at the price offered by the petitioner irrespective of the aforesaid facts. Under the circumstances, prayers sought for cannot be granted. So far as the contention on behalf of the petitioner that with regard to another land the Collector in an another auction which was held on that day, had accepted the offer and in the present case the Collector did not accept the offer is concerned, it is required to be noted that each land is required to be considered independently and

separately. There are so many consideration with regard to the market price such as location, area etc. Therefore, if in a given case the Collector has found that the price which was offered in the auction is proper price, it cannot be said that in another case also, the Collector has to accept the same. Under the circumstances, the aforesaid contention of the petitioner has no force and substance.

6. However, the submission made on behalf of the petitioner that the report of the Valuation Committee which is relied upon by the Collector to come to the conclusion that the offer of the petitioner did not fetch adequate price for the plot in question has not been supplied to the petitioner, deserves to be considered. Under the circumstances, the matter requires to be remanded to the Collector for taking fresh decision after supplying the report of the Valuation Committee to the petitioner which was relied upon by the Collector to come to the conclusion that the offer of the petitioner did not fetch adequate price and the same was on lower side.

7. For the reasons stated above, the order passed by the Collector, Gandhinagar dated 9th April, 2004 confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 16th May, 2005 passed in Revision Application No.25 of 2004 are hereby quashed and set aside the and matter is remanded to the Collector, Gandhinagar for taking decision afresh in the matter in accordance with law and on merits after supplying copy of the report of the Valuation Committee which was relied upon while coming to the conclusion that the offer of the petitioner was on lower side and did not fetch proper price for the land / plot in question. Such an exercise is to be done within two months from the date of receipt of this order. It is however made clear that this Court has not expressed any opinion on the merits of the case and it is ultimately for the Collector, Gandhinagar to taken an appropriate independent decision in accordance with law and on merits considering the value of the plot / land in question and proper price and the offer made by the petitioner. The Collector, Gandhinagar is free to take an independent decision considering the value of

the land in question.

The petition is disposed of accordingly.

Direct Service is permitted.

[M.R.Shah, J.]

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